IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4691 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SANJEEV FAMILY TRUST

Versus

INCOME TAX OFFICER

Appearance:

MR SN SOPARKAR for Petitioner No. 1

MR RP BHATT for Respondents No. 1-2

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 11/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

#. The petitioner, a specific Trust has challenged by this petition under Article 226 of the Constitution of India, the action of the first respondent in rejecting the petitioner's application made under Section 143(2)(a) of the Income-tax Act, 1961 (hereinafter to be referred to as "the Act") without hearing the petitioner and the action of the second respondent in taking various steps against the petitioner for recovery of the alleged tax liability of the petitioner for assessment years 1985-86 and 1986-87.

#. Case of the petitioner is that it is liable to be assessed under Section 161 of the Act in the like manner and to the same extent as its beneficiary would be liable to pay the tax in respect of the income of the petitioner-Trust which is distributed in the hands of the beneficiaries when the shares are determinate. Accordingly, it is the say of the petitioner that both for assessment year 1985-86 and assessment year 1986-87, the petitioner had `Nil' tax liability. However, the first respondent assessed the petitioner under Section 143(3) of the Act for both the years under consideration in the status of `an association of persons' and levied the tax at the maximum marginal rate and charged interest under Section 139(8) and Section 217(1A) of the Act. The petitioner moved separate applications dated 5th September, 1989 in prescribed Form 6A of the Income-tax Rules, 1962 under the provisions of Section 143(2)(a) of the Act as it then stood. It is an admitted position that these applications were made within the period of limitation objecting to the assessment made by the Assessing Officer. It is further stated by the petitioner that without giving any notice or an opportunity of hearing, the applications of the petitioner were rejected. However, even the said fact about the rejection of the petitioner's applications was not indicated to the petitioner and the petitioner came to know about such rejection only when the recovery proceedings were initiated against the petitioner.

#. The petitioner has, therefore, made the following prayers.

"(A) to quash and set aside the action of the 1st respondent in disposing of the petitioner's applications under Section 143(2)(a) of the Income Tax Act, 1961 (Annexure-D1 and D2) without hearing the petitioner and to quash and set aside the said orders passed by the 1st respondent;

(B) to command the 1st respondent to dispose of the applications (Annexure-D1 and D2) after hearing the petitioner and in accordance with law;"

#. The matter was admitted on 22nd July, 1992, but till date, no reply has been filed on behalf of the respondent. Therefore, the facts stated by the petitioner and the averments made remain unchallenged. Provisions of Section 143(2) as are relevant for our purpose are reproduced hereunder.

"(2) Where a return has been made under section 139, and--

(a) an assessment having been made under sub-section (1), the assessee makes within one month from the date of service of the notice of demand issued in consequence of such assessment, an application to the Assessing Officer objecting to the assessment, or

(b) xxx xxx xxx xxx

the Assessing Officer shall serve on the assessee a notice requiring him, on a date to be therein specified, either to attend at the Assessing Officer's office or to produce, or to cause to be there produced, any evidence on which the assessee may rely in support of the return: "

It is apparent that once an assessee makes an application in the prescribed form within the period of limitation, the legislature mandates that the Assessing Officer issues a notice calling upon the petitioner to attend the office of the Assessing Officer or to produce or cause to be produced any evidence on which the assessee relies in support of the return. The Assessing Officer is left with no discretion and in such circumstances, the 1st respondent while disposing of the applications, made on behalf of the petitioner, was required to deal with the same by strictly complying with the provisions of Section 143(2)(a) of the Act as were applicable for the years under consideration.

#. The 1st respondent having failed to do so, this petition is required to be allowed. Needless to state that all the consequential actions like charging interest, and recovery proceedings in pursuance of the orders under Section 143(1) of the Act (Annexures C1 and C2) are bad in law and cannot be sustained.

#. The petition is accordingly allowed and the orders disposing of the petitioner's applications under Section 143(2)(a) of the Act without hearing the petitioner are quashed and set aside. The 1st respondent is directed to dispose of the said applications (Annexures D1 and D2) after providing adequate opportunity of hearing to the petitioner and in accordance with law. Rule is made absolute in the aforesaid terms with no order as to costs.

[B.C. PATEL, J.] [D.A. MEHTA, J.]

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